HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.283 of 2007

Between:

M/s.Vani Marine Ice Factory,
Plot No.27, Fishing Harbour,
Vishakapatnam, rep by its
Managing Director G.Seshagiri Rao

... Appellant

AND

Vishakapatnam Port Trust,
Rep by Its Chief Mechanical Engineer,
Vishakapatnam.

... Respondent

; JUDGMENT :

Counsel for the appellant : Shri V.S.R.Anjaneyulu

Counsel for respondent : Shri P.Sri Raghuram

Dated: 27th April, 2007

Per C.V.NAGARJUNA REDDY, J.

This appeal is directed against order dated 28.1.2006 passed by the learned Single Judge in Writ Petition No.324 of 2002, whereby he declined to quash communication dated 14.12.2001 sent by Chief mechanical Engineer, Visakhapatnam Port Trust for payment of Rs.9,81,260/- towards difference in the amount of electricity charges.

The appellant is a proprietorship concern. On 10.06.1981, it was granted long term lease by the competent authority of Visakhapatnam Port Trust (for short, 'the Port Trust') in respect of a piece of land admeasuring 1909.1 sq.mts. together with certain buildings constructed thereon situated in plot No.27 at Fishing Harbour, Vishakapatnam. The terms of the lease provide for payment of rates, taxes, services, charges etc., by the appellant, which established an ice factory on the leased premises. The respondent extended power supply to the appellant from out of the power supplied to it by the erstwhile APSEB and subsequently by AP Transco, which is a licensee under the Electricity Act, 2003.

It appears that the meter installed in the premises of the appellant for measuring the power consumption became defective and, therefore, the same was replaced on 24.3.2001. For the period during which the meter was defective the respondent made an assessment, following Clause 22.3.3.3 of the A.P.Transco Tariff Terms and raised a demand for Rs.9,81,260/- towards the cost of power consumed by the appellant and not metered due to the defect in the meter. The demand was communicated to the appellant by the Chief Mechanical Engineer of the Port Trust vide his letter dated 14.12.2001.

The appellant questioned the demand in Writ Petition No.324 of

2002. While admitting the writ petition, the learned Single Judge stayed disconnection of the supply of electricity to the factory of the appellant. On notice, the respondent filed a counter affidavit and moved an application for vacating the stay. At that stage, the learned single Judge heard arguments on the merits of the case and dismissed the writ petition. The learned single Judge noted that the conditions stipulated in the interim order dated 4.1.2002 passed in W.P.M.P.No.364 of 2002 had not been complied with and held that the appellant is not entitled to discretionary relief under Article 226 of the constitution of India. The learned Single Judge further held that the writ petition is not maintainable because the dispute raised by the appellant falls within the realm of a contract.

We have heard Shri V.S.R.Anjaneyulu, learned counsel for the appellant and Shri P.Sri Raghuram, learned counsel for the respondent and perused the record.

Learned counsel for the appellant vehemently argued that since the respondent is a public authority constituted under the Major Port Trusts Act 1963, it is amenable to the writ jurisdiction of this Court and the learned Single Judge committed an error by declining to entertain the appellant's grievance against unilateral and arbitrary assessment of the power allegedly consumed in the factory during the period when the meter was defective. Shri Anjaneyulu submitted that Article 14 is applicable even to purely contractual matter and, therefore, the demand created by the respondent is liable to be quashed. He further submitted that if there is any dispute relating to the functioning of the meter, the respondent ought to have referred the dispute to the Chief Electrical Inspector under Section 26(6) of the Indian Electricity Act 1910.

Opposing the contentions of the learned counsel for the

appellant, the learned counsel for the respondent reiterated his submissions made before the learned single Judge that the dispute relating to the payment of electricity arrears arose between the appellant and the respondent under a lease agreement and, therefore, the same is not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. The learned counsel argued that the appellant has got the common law remedy of approaching the civil Court by way of a civil suit and, therefore, the learned single Judge justifiably dismissed the writ petition.

We have thoughtfully considered the entire matter. It is not in dispute that there is no subsisting contract between the distribution company and the appellant for supply of electricity. The respondent Port Trust is not a licensee for supply of power under Electricity Act, 2003. It is only a bulk consumer of the Northern Power Distribution Company Limited. The appellant is being supplied power by the respondent from out of the power received by it from the distribution licensee. This is purely an internal arrangement between the appellant and the respondent. Kit is neither the pleaded case of the appellant nor the learned counsel has argued that the lease agreement entered into between the parties is statutory in nature or that supply of power by the respondent is a part of its statutory duty. Therefore, we do not see any reason to disagree with the learned Single Judge that the dispute raised in the writ petition lies in the realm of contract and does not merit adjudication under Article 226 of the Constitution.

Whether the demand made by the respondent is legally sustainable or not and what exactly is the liability of the appellant towards back-billing for the period during which the meter was defective are all aspects which are to be gone into by a competent civil

court if and when the appellant avails remedy by filing civil suit.

In the result, the writ appeal is dismissed. The appellant shall be free to avail remedy by filing civil suit.

As a sequel to dismissal of the appeal, W.A.M.P.Nos.540, 541 and 662 of 2007 filed by the appellant for interim reliefs are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 27-04-2007.
mdaa